

## **REMARKS / ARGUEMENTS**

### **Status:**

#### **Claims Objections under 37 CFR 1.75 (C)**

Claim 24, (new, was 3) is rewritten to place it in proper dependent form by now limiting the subject matter of a previous claim.

Claims 4 and 5 are cancelled.

Claim 25, (new, was 6) is rewritten in dependent form and is now also within the scope of Claim 22 (was 1).

Claim 7 is cancelled.

Those claims using the improper grammar of DNA/RNA have been rewritten as DNA and RNA. No new matter has been added in the revision of the claims.

#### **Claims Rejection under 35 U.S.C 101**

Claims 22 (new, was 1), 23 (new, was 2), 24 (new was 3), 25 (new, was 6), 26 (new, was 8), have been rewritten as operative and as having utility. This and the reasons given by the OA for rejection of 1-21 are further addressed below.

The rejected claims 1-7, 9, and 12-21 have either been rewritten as new and/or cancelled as indicated in the previous paragraph. No new matter has been added in the revision of the claims. These revisions have become definite and do now point out and distinctly claim the subject matter of the invention as further discussed below.

The Applicant thanks the Examiner for both the knowledgeable OA summary and for the interesting articles sent. Claims 1- 21 are rejected because "the disclosed invention is inoperative and therefore lacks utility".

The rewritten and more clearly phrased claims are now shown to be operative and to have utility. In particular we point out that the claimed steps are based upon the treatment of events under Case Study page 4 of the application. The Applicant has devised a practical method of application and a supportive theory for the cure of cancer based upon the G.B. The steps of the method, briefly repeated are, administrate the bacteria by the intravenous route, followed by antibiotic with all rupture causing atoms and short molecular strands to become available. These steps are explicit, quantifiable, and clear so as to enable treatment in cases of advanced cancer. The theory also in brief, is that the atoms and short molecular strands become available for the mechanism of repair, of reconstruction of partial resynthesis that otherwise would not be available in sufficient quantity to enable the mechanism to take place.

Our view is reinforced in the article of Sancor et al, page 46, las paragraph where the phrase ----- "newly synthesized DNA" appears in obvious reference to a need for this function.

We hold that the method and theory is operative and therefore posses utility while not dismissing immunity as an unclearly defined, but possible factor in the cure of cancer.

W. Daniel Hillis in his book, "The Pattern on the Stone" observes -----, "but science makes progress through a series of surprises". We have some hope that our method and theory may offer such a surprise.

### **Rejections Based Upon 35 U.S.C. 112 B.**

The rejections stated "as being indefinite for failing to particularly point out the subject matter" are now amended to now be in compliance.

**Double Patenting**

The Claim now amended eliminates double patenting.

The "indefinite for failing-----, is now amended and does particularly point out and distinctly claim the subject matter which Applicant regards as the invention. This to be found within the newly amended claims.

It is claimed that the approximate number of bacteria administered by the intravenous route for the treatment of cancer is new and that the administration of selected antibiotics for the treatment of cancer is also new.

**Response to the OA Conclusion.**

The inoperative limitation has been amended and is now operative. We respectfully reply to the sentence, "However the use of live or killed bacteria is not new"; that it is the intravenous administration of live or killed bacteria as a part of the treatment of cancer that is new. We also give antibiotics that are selected by laboratory sensitivity testing for their effectiveness against the particular bacteria chosen for intravenous administration is new. The quantitation of the approximate number of bacteria is new. Since antibiotics were unknown in Cooley's time, the usage now of antibiotics in any way involving the treatment of cancer is new.

**CONCLUSION**

Applicant submits that the patent application and claims are in condition for allowance and requests such action.

Should the Examiner have any final questions or concerns prior to allowance please have the Examiner contact the below signed Applicant.

Respectfully submitted,



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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450, on this  7  day of October, 2005.

E. J. Asbury III  
Name

  
Signature